

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL NO. 4:10cr18
	§	
ELVIS DEWAYNE ATTEBERRY (3)	§	

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on June 5, 2014, to determine whether Defendant violated his supervised release. Defendant was represented by Frank Henderson. The Government was represented by Chris Eason.

On April 28, 2011, Defendant was sentenced by the Honorable Richard A. Schell, United States District Judge, to a sentence of 47 months imprisonment followed by a three-year term of supervised release for the offense of possession of pseudoephedrine, a List 1 Chemical, with intent to manufacture methamphetamine. Defendant began his term of supervision on October 31, 2013.

On May 23, 2014, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision (the "Petition") (Dkt. 436). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall refrain from any unlawful use of a controlled substance; (2) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related

to any controlled substances, except as prescribed by a physician; (3) Defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month; (4) Defendant shall participate in a program of testing and treatment for drug abuse, under the guidance and direction of the U.S. Probation Office, until such time as Defendant is released from the program by the probation officer.

The Petition alleges that Defendant committed the following violations: (1) On November 26, 2013, February 13, 2014, and May 14, 2014, defendant submitted urine specimens which tested positive for marijuana. On March 6, 2014, Defendant submitted a urine specimen which tested positive for methamphetamine. On April 9, 2014, Defendant submitted a urine specimen which tested positive for marijuana and methamphetamine. Defendant admitted in writing to using marijuana and methamphetamine. Urine specimens submitted for random drug testing were diluted by Defendant prior to testing on February 13, 2014, March 6, 2014, May 13, 2014, and May 14, 2014, as confirmed by Alere Laboratories; (2) Defendant failed to submit a monthly report for the months of March 2014 and April 2014 by the 5th of each month; and (3) Defendant failed to submit urine specimens for random drug testing at Heritage HP in Sherman, Texas, on April 16, 2014, April 24, 2014, and April 29, 2014, May 9, 2014 and May 13, 2014.

At the hearing, Defendant entered a plea of true to the alleged violations. Defendant waived his right to allocute before the district judge and his right to object to the report and recommendation of this Court. The Court finds that Defendant has violated the terms of his supervised release and that his supervised release should be revoked.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984 and having considered the arguments presented at the June 5, 2014 hearing, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of eighteen (18) months, with no supervised release to follow. The Court further recommends that Defendant's term of imprisonment be carried out in the Bureau of Prisons facilities located in Forrest City, Arkansas, if appropriate.

SIGNED this 11th day of June, 2014.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE